

record available to the public for inspection free of charge and for copying at a reasonable cost during all normal business hours at its Washington, D.C. office. OSM shall also maintain information in or near the area in which the petitioned land is located; this information shall be available for public inspection, free of charge, and for copying at reasonable cost during all normal business hours. At a minimum, this information shall include a copy of the petition.

(2) OSM need not make available to any person or entity the specific location of property proposed to be nominated to be listed or listed in the National Register of Historic Places if it is determined that disclosure of that information would create a risk of destruction or harm to such properties. Withheld information must be disclosed when a designation of unsuitability would rest primarily on an allegation based on that information.

§ 769.17 Hearing requirements.

(a) Within 10 months after receipt of a complete petition, OSM shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. OSM may subpoena witnesses as necessary. The hearing may be conducted with cross-examination of expert witnesses only. A record of the hearing shall be made and preserved. No person shall bear the burden of proof or persuasion. All relevant parts of the data base and inventory system and all public comments received during the public comment period shall be included in the record and considered by OSM in deciding the petition.

(b)(1) OSM shall give notice of the date, time, and location of the hearing to:

(i) Local, State, and Federal agencies which may have an interest in the decision on the petition;

(ii) The petitioner and the intervenors; and

(iii) Any person known by OSM to have a property interest in the petitioned area.

(2) Notice of the hearing shall be sent by certified mail to the petitioner and

intervenors, and by regular mail to other persons involved in the proceeding, and postmarked not less than 30 days before the scheduled date of the hearing.

(3) OSM shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks prior to the scheduled date of the public hearing in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisements must begin between 4 and 5 weeks prior to the scheduled date of the public hearing.

(c) OSM may consolidate into a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(d) If any petitions relates to an area of Federal lands which is the subject of a pending surface coal mining and reclamation operations permit application, OSM may, with consent of all petitioners and intervenors, coordinate the hearing on the petition required under paragraph (a) of this section with any hearing on the permit application or informal conference held in accordance with section 513(b) of the Act and § 740.13 of this chapter on the permit application. Nothing in this paragraph shall relieve an applicant for a permit from the burden of establishing that his or her application is in compliance with the requirements of the Federal lands program.

(e) Prior to designating any lands as unsuitable for surface coal mining operations, OSM shall issue a detailed statement on the abundance of coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

§ 769.18 Decisions on petitions.

(a) In reaching his or her decision, the Director shall use the information and consider the recommendation provided by the Federal land management agency, information provided by other governmental agencies, the detailed statement, when it is prepared under

§ 769.19

§ 769.17(e), and any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the Director, including a statement of reasons, within 60 days of completion of the public hearing, or if no public hearing is held, within 12 months after receipt of the complete petition. The Director shall simultaneously send the decision by certified mail to the petitioner and the intervenors and by regular mail to all other persons involved in the proceeding.

(c) If the Director concurs with the recommendation of the surface managing agency, the Director's decision becomes final. If the Director does not concur with the recommendation, he or she shall notify the Director of the surface managing agency within 30 days

30 CFR Ch. VII (7–1–10 Edition)

after the public hearing, if any. The decision at the same time will be referred to the Secretary through respective agency heads for resolution and issuance of a final decision within 60 days after the hearing, if any.

(d) A final decision of the Director or the Secretary is subject to judicial review in accordance with § 775.13 of this chapter and section 526 (a)(2) and (b) of the Act.

§ 769.19 Regulatory policy.

Once an area of Federal lands is designated as unsuitable for all or certain types of surface coal mining operations, any permit or lease shall be conditioned in a manner so as to limit or prohibit surface coal mining operations on the designated areas in accordance with the designation.